THE EUROPEAN MECHANISM FOR FINANCIAL STABILITY AND THE EURO-PLUS PACT

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Abstract

The economic crisis that has affected countries from all continents has generated, among others, also a strong financial crisis, which in turn, has caused serious imbalances in the economic and financial environment of EU Member States. Under these circumstances, the Council, being in an exceptional situation, "outside the control of Member States", as it itself states in the Preamble to Regulation No. 407/2010, considered necessary, "the immediate establishment of a stabilization mechanism at EU level in order to maintain the financial stability in the European Union", mechanism that "would enable the Union to respond in a coordinated, rapid and effective way to the serious difficulties undergone by a certain Member State".

Keywords: *The European Financial Stabilization Mechanism; the Euro-Plus Pact; European Union; The Council Conclusions; EU Member States.*

Introduction

Without claiming to develop a specialized analysis on the financial crisis that not just Europe has crossed through the last three years and still crosses, it is impossible not to observe the concerted efforts of Member States of the European Union in order to overcome it, or, at least, to maintain it at the same level. Thus, further on, we propose an overview of what is happening now in the EU, while trying an economic recovery in Europe. This presentation is however limited only to the legal aspects, leaving time to decide whether all these efforts have been successful or not. In this sense, we bring in the forefront two measures at EU level, namely the European Financial Stabilization Mechanism and the Euro-Plus Pact.

2. The European Financial Stabilization Mechanism (EFSM)

The economic crisis that has affected countries from all continents has generated, among others, also a strong financial crisis, which in turn, has caused serious imbalances in the economic and financial environment of EU Member States.

Aware of the fact that it witnesses a financial crisis and an economic downturn "without precedent which has brought serious damage to the economic growth and financial stability, leading to a strong deterioration in the deficit and debt situation of Member States"[2], the European Union legislature has been put in the situation of facing new challenges. One of these challenges is the fact that the financial crisis has also deteriorated the loan conditions in Member States, situation which, unregulated in time would result in the emergence of a new threat "against the stability, unity and integrity of the Eurozone, as a whole"[3].

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[2] Paragraph (3) of the Preamble to Regulation No. 407/2010 of the Council of May 11, 2010 establishing a European mechanism of financial stabilization.

[3] Paragraph (4) of the Preamble to Regulation No. 407/2010.

Under these circumstances, the Council, being in an exceptional situation, "outside the control of Member States"[4], as it itself states in the Preamble to Regulation No. 407/2010, considered necessary, "the immediate establishment of a stabilization mechanism at EU level in order to maintain the financial stability in the European Union"[5], mechanism that "would enable the Union to respond in a coordinated, rapid and effective way to the serious difficulties undergone by a certain Member State"[6]. The mechanism is activated in the context of a joint support EU / International Monetary Fund (IMF). Therefore, on May 13, 1010, Regulation no. 407/2010 for establishing a European financial stabilization mechanism[7] came into force; through this regulation, "strict economic policy conditions to maintain the sustainability of public finances of the beneficiary Member State and to rebuild its capacity to finance itself on financial markets"[8] were imposed.

The mechanism established by Regulation no. 407/2010 reproduces, in the 27 EU Member States, the basic principles of operation of Regulation no. 332/2002 for establishing a facility providing medium-term financial assistance for Member States balances of payments, applicable to Member States outside the Eurozone.

The rules contained in the Regulation determine the conditions and the procedure under which a Member State that is affected or is in a situation that ultimately leads to severe economic or financial distortions may obtain financial assistance from the Union. We mention that the situation where that State is in must be caused by exceptional occurrences resulted beyond its control.

If a Member State wishes to obtain financial assistance from the Union, pursuant to Regulation no. 407/2010, it shall notify the Commission institution of its intention, presenting also a draft program of economic and financial adjustment. Discussions are being held with the European Commission, in cooperation with the European Central Bank (ECB). The financial assistance which may take the form of a loan or a credit line is granted by a Council decision adopted by qualified majority, based on a proposal from the Commission.

Under article 3, paragraph (3), letters a), b) and c), the decision to grant a loan include the following:

- the amount, the average maturity, the pricing formula, the maximum number of instalments and the period of availability of the financial assistance from the Union, as well as other rules necessary for the implementation of the assistance;
- general economic policy conditions attached to the financial assistance from the Union in order to restore a sound financial or economic situation in the beneficiary Member State and to rebuild its capacity to finance itself on financial markets; these conditions will be determined by the Commission, in consultation with the ECB;
- an approval of the adjustment program prepared by the beneficiary Member State in order to fulfil the economic conditions attached to the financial assistance received from the Union.

Regarding the decision to grant a credit line, article 3, paragraph (4), letters a), b) and c) sets out its content, namely:

- the amount, the fee for the credit line availability, the pricing formula applicable for the release of funds and the period of availability of the financial assistance from the Union, as well as other rules necessary for the implementation of the assistance;

[4] Paragraph (5).

[5] Idem.

[6] Idem.

[7] This Regulation shall not affect the validity of Regulation No. 332/2002 establishing a facility providing medium-term financial assistance for Member States balances of payments.

[8] Paragraph (7) of Regulation No. 407/2010.

- general economic policy conditions attached to the financial assistance from the Union to restore a sound financial or economic situation in the beneficiary Member State; these conditions will be established by the Commission, in consultation with the ECB;

- an approval of the adjustment program prepared by the beneficiary Member State in order to fulfil the economic conditions attached to the financial assistance received from the Union.

"When the mechanism is activated, it allows the Commission to loan from financial markets on behalf of the Union, under cover of an implied warranty from the EU budget. The Commission loans then the receiving funds, to the beneficiary Member State. This special credit arrangement involves the absence of charges afferent to the debt service for the Union. The interest and the loan capital are fully reimbursed by the beneficiary Member State, through the Commission. The EU budget guarantees the redemption of bonds by a p.m. line, in the event of default by the debtor"[9].

In addition to this mechanism, the European Facility for financial stability[10], such funds guaranteed by the Euro area, as well as IMF funding are available for Member States of the Eurozone. If a Member State wants funding from the International Monetary Fund, the State must first notify the European Commission. Following the notification, the Commission shall examine the possibilities within the mechanism of financial assistance from the Union, as well as the compatibility conditions on economic policy for commitments envisaged by the Member State to implement the recommendations of the Council and the decisions of the Council adopted under articles of the Treaty on the functioning of the European Union[11].

Member States outside the Eurozone are also eligible for assistance under the Regulation on the balance of payments.

According to The Communication of the European Commission on the European financial stabilization mechanism[12], "on November 21st, Ireland requested financial assistance from the European Union and Member States of the Eurozone. In the context of a joint program EU / IMF, the financial assistance package for Ireland will be funded through the EFSM and FESF, supplemented by bilateral loans to be negotiated by Member States". According to the same document, "in 2010, most Member States of the Eurozone registered large public deficits, which resulted in substantial increases of total issuances of government bonds denominated in Euro and in further growth of public debt. That overall increase in the offer of sovereign bonds increased the difficulties in accessing the market for some smaller issuers, which also involved the persistence of a future refinancing risk. Amounts to be attracted from the market in 2011 are, generally the same as in 2010 and will remain at least as high for many years"[13].

3. The Euro-Plus Pact

The European Council from March[14] this year took place on the background of a sensitive economic recovery in the global economic crisis. Heads of State or Government, meeting in Brussels, adopted, among other things, a package of measures designed to help overcome the financial crisis. The package aims at strengthening the economic governance of the European Union and at ensuring the sustainability of the Eurozone, as a whole.

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[9] According to the Commission Communication to the Council and to the Economic and Financial Committee on European financial stabilization mechanism, COM (2010) 713 final of November 30, 2010, p. 2.

[10] FESF.

[11] Articles 121, 126 and 136 TFEU.

[12] COM (2010) 713 final, p. 6.

[13] Idem.

[14] 24 to 25 March 2011, Brussels. The Council Conclusions are also found on the website of the European Council: (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/RO/ec/120300.pdf).

In Annex I of the Conclusions presented at the end of the meeting from March, we find details about the Euro-Plus Pact[15]. The Pact is nothing else but an agreement concluded between Member States of the Eurozone and was joined by Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania. Besides these countries, others are also invited, but voluntarily.

The purpose of the Pact, as agreed by Heads of State or Government is the strengthening of the "economic pillar of monetary union in order to achieve a new quality of economic policy coordination, to enhance competitiveness, leading thus, to greater convergence"[16]. The Pact focuses mainly on areas of national competence and which are essential for enhancing competitiveness and preventing further disturbances.

The Pact is based on ***four guiding rules***, as it follows:

1. The Pact will be *conform to the existing economic governance* within the Union and will strengthen it. At the same time, the Pact is conducted using tools already available, namely: Europe 2020, the European Semester, the Integrated Guidelines, the Stability and Growth Pact and the new framework for macroeconomic surveillance;

2. The Pact will cover *priority policy areas essential for promoting competitiveness and convergence*. In the policy areas chosen, the Heads of State or Government will agree on some common objectives[17];

3. *"Participating Member States will pursue these objectives through their own policy mix, taking into account the specific challenges faced*. Every year, each Head of State or Government will take concrete national commitments;

4. *The Pact will fully respect the integrity of the single market"*[18].

The Pact objectives can be achieved only if the participating States are able to fulfil their obligations, namely: promoting competitiveness, employment, strengthening the public finance sustainability and strengthening the financial stability. Each participating Member State must present specific measures that it considers necessary and that must adopt in order to meet these obligations. If a Member State can prove that it is not necessary to act in one area, it will not take measures in this direction. Each State is free to identify and establish by itself, nationally, measures to be adopted, but to the identification and promotion of national actions, the State participating to the Pact must take into consideration concrete policy and monitoring commitments provided in the Pact. Therefore, "choosing the strategic actions necessary to achieve the common goals is connected to the liability of each country, but special attention will be paid to possible measures being referred to further on"[19]:

A. Promoting competitiveness. Under the provisions of the Pact "the progress will be evaluated based on the evolution of wages and productivity and on the adjustment need, in the area of competitiveness. To assess whether wages evolve in accordance with productivity, unit labour costs (ULC) will be monitored over a period of time, in relation to developments from other Eurozone countries and comparable to the major trading partners. For each country, unit labour costs will be assessed in the economy, as a whole and separately for each major sector (manufacturing, services and the commercial and non commercial sectors). Significant and sustained growth can lead to erosion of competitiveness, particularly if it is accompanied by a growing current account deficit and by the diminishing of market shares for exports. Actions to increase competitiveness are needed in all countries, but special attention will be paid to those facing serious difficulties in this regard. To ensure balanced and widespread growth across the Eurozone, specific tools and joint initiatives will

[15] Annex I is entitled "Euro-Plus Pact - closer coordination of economic policy for competitiveness and convergence".

[16] Annex I to the European Council Conclusions, 24 to 25 March 2011, p. 13.

[17] Under the Pact, pp. 14-15.

[18] Idem.

[19] P. 15 of the European Council Conclusions, the document cited above.

be considered in order to promote productivity in regions lagging in development. Each country will be responsible for the specific policy actions that it chooses to take in order to promote competitiveness, but special attention will be paid to the following reforms:

(i) complying with national traditions of social dialogue and business relations, measures to ensure cost developments consistent with productivity, such as:

• reviewing procedures for determining wages and, where appropriate, the degree of centralization in the process of negotiation and mechanisms for indexing, while maintaining the autonomy of social partners in the process of collective negotiation;

• ensuring that the agreements establishing wages in the public sector support the competitiveness efforts from the private sector (taking into account the important barometer effect that wages from the public sector have).

(ii) measures to increase productivity, such as:

• further opening up of sectors protected by measures taken at national level to remove unnecessary restrictions on professional services and retail sector, to promote competitiveness and efficiency, by totally complying with the EU acquis;

• specific efforts to improve the educational systems and to promote research and development, innovation and infrastructure;

• measures to improve the business environment, especially SMEs, in particular by eliminating bureaucracy and improving the regulatory framework (for example, laws on bankruptcy, the commercial code)"[20].

B. Promoting employment. In this respect, it is stated that "a properly functioning labour market is essential for the Eurozone competitiveness. Progress will be assessed based on the following indicators: long-term unemployment rates and, among young people, employment rates. Each country will be responsible for the specific actions referring to policies that it chooses in order to promote employment, but particular attention will be paid to the following reforms:

• labour market reforms to promote "flexicurity", to reduce undeclared work and to increase employment;

• lifelong learning;

• tax reforms such as reducing taxes on labour, to increase work profitability, while maintaining the overall fiscal revenues and adopting measures to facilitate the labour force participation of the second contributor to the family income"[21].

C. Strengthening the public finances sustainability. "To ensure full implementation of the Stability and Growth Pact, special attention will be paid to:

- the sustainability of the pension systems, health care and social benefits.

This fact will be assessed, in particular, based on the sustainability gap indicators. These indicators show if debt levels are sustainable, based on current policies, especially on pensions systems, health care and social benefits and taking into account the demographic factors. Necessary reforms to ensure sustainability and adequacy of pensions and social benefits could include:

• aligning the pension systems to the national demographic situation, for example by aligning the effective retirement age to life expectancy or by increasing the participation rates;

• limiting early retirement schemes and using targeted incentives to employ older workers (especially the age group over 55 years).

- National fiscal rules. Participating Member States undertake to transpose the European fiscal rules, as set out in the Stability and Growth Pact, into national legislation. Member States will have the right to choose a specific national legal instrument to be used, but they will have to guarantee that

[20] The European Council Conclusions, the document cited above, pp. 16-17.

[21] Ibid, p. 17.

it is required and has a sustainable character (for example, by Constitution or by a framework Law). Also, the exact wording of the rule will be decided by each country (for example, it could take the form of a "debt brake", a primary balance related rule or of a norm of expenditure), but it should ensure fiscal discipline at national and sub-national level. The Commission will be able to be consulted on the tax legislation in question before adoption, with the total compliance with prerogatives of national Parliaments to make sure that it is compatible with EU rules and that it assists them[22].

D. Strengthening the financial stability. "A strong financial sector is the key-element to the global stability of the Eurozone. A comprehensive reform of the EU framework for financial sector supervision and regulation was developed. In this context, Member States undertake to adopt national legislation to solve the banking crisis, by fully complying with the Community acquis. Strict simulations of banking crisis, coordinated at EU level will be regularly done. In addition, ESRB President and the President of Eurogroup will regularly be invited to inform the Heads of State or Government on matters relating to macro-financial stability and macroeconomic developments in the Eurozone, requiring special attention. In particular, for each Member State, the private debt of banks, households and non-financial companies will be closely monitored"[23].

Once established the guidelines of the participating States' commitments, the action is transferred from the European Union, at States level. Consequently, the participating states gradually include in their national reform programs (NRP), as well as in the stability and convergence programs, a number of commitments covered by the regular supervisory framework, framework established by the Pact.

On June 21, 2011, the General Secretariat of the Council published the first document of Member States Ministers participating in the Euro-Plus Pact. Under the Report[24], "despite the short time interval between the agreement on the Euro-Plus Pact and the PNR transmission, and the stability and convergence programs, the majority of participating States have succeeded to provide measures in their programs in relation to commitments under the Euro-Plus Pact. In total, more than a hundred different measures, focusing in particular, on the four objectives of the Euro-Plus Pact were announced: competitiveness, promoting employment, strengthening public finance sustainability and strengthening the financial stability". Next, we shall present the commitments and national policy measures adopted in Romania, as they are listed in the Annex[25] to the Report.

1. Promoting competitiveness

- the declining share of GDP with wages in public sector by one percentage point in 2012 compared with 2010, through gradual recovery until the end of 2012 of nominal reductions with 25% made in 2010. Therefore, the development of the unit labour cost will be below the level of the labour productivity development;
- strengthening the capacity and performance of the research, development and innovation sector (RDI), by implementing the new system of institutional financing;
- developing the European cooperation in the RDI area by promoting two strategic projects: the International Centre for Advanced Study Danube - Danube Delta - Black Sea and the Extreme Light Infrastructure (ELI);
- the national strategy for lifelong learning;
- creating the reference curriculum skills upgrading oriented;

[22] Ibid., p. 19.
[23] Idem.
[24] It can be accessed on: http://register.consilium.europa.eu/pdf/ro/11/st00/st00024.ro11.pdf
[25] Pp. 31-36.

- prioritizing the public investment in order to achieve competitiveness by creating a high-level working group under the direction of the Prime Minister, including a list of priority investment projects for which funding may be provided in the next 3-5 years;

- the sale on financial markets of major packages of shares in state companies;

2. Promoting employment:

- creating a unitary waging framework in the public sector by adopting the framework Law on the staff's unitary salaries paid from public funds;

- strengthening the social dialogue and rendering more flexible the system of collective work agreements;

- measures to promote flexicurity and employment through amendments to the Labour Code;

- implementing the national strategy on reducing the incidence of undeclared work for 2010-2012;

- adopting the draft law on the exercise of occasional activities performed by labourers;

- amending and supplementing the legal framework for the unemployment insurance system and employment stimulation;

- amending and supplementing Law no. 279/2005 on apprenticeship to the workplace;

- the reform of the legal framework for adult training;

- implementing the simplified European framework for the recognition of professional qualifications, in terms of reciprocity, between Member States;

- initiating procedures for the classification of universities into categories, based on the evaluation of study programs and on their institutional capacity: mostly educational universities, universities for scientific research and artistic creation and universities for advanced research and education.

3. Strengthening the sustainability of public finances:

- implementing the Law on the unitary pension system providing:

(i) the gradual increase of the retirement age to 65 years for men and 63 for women until 2030, as well as the gradual increase of the complete contribution period to 35 years for women and men, by 2030;

- (ii) the introduction of stricter criteria for the access to partial early retirement;

- (iii) the gradual introduction of a mechanism for indexing pensions depending on inflation, by introducing into national law, a numeric rule for the general budget deficit under the Maastricht Treaty;

- further fiscal consolidation given a budget deficit of 5% of GDP in ESA terms for 2011 and less than 3% of GDP in 2012;

- reducing the arrears of the general budget by restructuring the health sector and by strengthening the budgetary discipline at local authorities level, by applying the recently approved amendments to the Law on local public finances;

- the implementation of the parental allowance program;

- improving the flexibility of the school educational system;

- defining the legislative framework on social assistance including also social services and benefits.

4. Strengthening the financial stability:

- Romania has applied since 2004, a series of measures to reduce the vigour of forex loans, using a wide range of tools, some of which still remain in force, even after the adjustments undertaken in connection with the accession to EU requirements;

- additional measures to ensure the comprehensive implementation of IFRS (International Financial Reporting Standards) by the banking sector since 2012;

- by the end of June 2011, the NBR will issue recommendations for prudential filters to further ensure a prudent policy in terms of solvency and bank reserves;

- amending the legislation for the purpose of allowing the use of Fund resources of the Bank Deposit Guarantee (FRBDG) to finance the restructuring approved by the NBR on the transfer of deposits, including the operations of assets transfer and assuming liabilities;

- develop procedures necessary to implement the new duties of the central bank and FRBDG in restructuring the credit institutions, as well as the FGBDG immediate access to government funds, if necessary;

- reconsidering the regulations of the legal framework on the liquidation of credit institutions to take measures, if necessary, in order to ensure their consistency;

- the increase, by NBR, of the scope of instruments accepted as guarantees in refinancing operations by including the bonds issued in lei by international financial institutions listed on BSE and Sovereign Eurobonds;

- establishing a prudential treatment of the temporary holding of equity, resulting from the restructuring of loans in order to avoid the weakening of the financial position of banks;

- monitoring the loans in foreign currency and making the necessary arrangements for their price to reflect accurately and transparently the risk of granting them to debtors at risk; - failing to transpose the draft legislation on insolvency of individuals and debt recovery, which could undermine the debtors' discipline;

- adopting additional measures by the Central Bank on the contingency plan, in order to avoid systemic risk in the banking sector.

Chronologically, concerning the documents developed in the European Union, we notice that one month after the presentation of the Report of Ministers participating in the Euro-Plus Pact, on July 21st, 2011, Ministers of the Eurozone, together with representatives of EU institutions, signed the "Declaration of the Heads of State or Government of the Eurozone and EU institutions"[26]. Since this is a declaration, that is, a document not legally binding, but a document of principles, the legal commitments lack, but it is worth mentioning some provisions related to our subject. Thus, those who signed the Declaration, inter alia, required "the rapid completion of the legislative package strengthening the Stability and Growth Pact and the new macroeconomic surveillance. Eurozone Member States will fully support the Polish Presidency to reach an agreement with the European Parliament on voting procedures in the preventive component of the Pact"[27]. However, they agree "that it would be needed in the EU regulatory framework" to rely "less on external credit ratings, given the recent Commission proposals in this direction"[28]. In the end of the Declaration, the European Council President, after consultation with the European Commission President and the Eurogroup President, is invited until October 2011, to make proposals on how to improve working methods and enhance crisis management in the Eurozone.

At the completion date of this brief presentation of some EU initiatives on the financial crisis, the economic and financial situation in Europe, and not only, worries the world, again. This is why, at the meeting of September 12, 2011, the so-called "package of six proposals" was adopted, "package" which refers to six pieces of legislation designed to strengthen the economic governance in the EU. Four of those proposals relate to tax issues, including a reform to the Stability and Growth Pact of the EU, while the other two are intended to identify and effectively approach the economic imbalances within the EU and the Eurozone.

[26] It can be accessed on: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/RO/ec/124001.pdf.
[27] Paragraph 13 of the Declaration.
[28] Paragraph 15 of the Declaration.

In the margins of the European Council meeting on 1-2 March 2012, 25 European leaders signed the Treaty on Stability, Coordination and Governance (TSCG) aimed at strengthening fiscal discipline and introducing stricter surveillance within the euro area, in particular by establishing a "balanced budget rule". The content of the treaty had been endorsed at the last European Council meeting in January[29].

4. Conclusions

We conclude our brief presentation, by reproducing two statements of those who attended the meeting of September 12, 2011, namely Herman Van Rompuy, the European Council President and Donald Tusk, Prime Minister of Poland. The first said that “We face a difficult period and this new set of rules and procedures, which were discussed in the Task Force last year, and have subsequently been transposed into law, represents an important step in the process of strengthening the macroeconomic surveillance and fiscal discipline”[30]. Donald Tusk said: “Our main task at this time - in cooperation with the European Council President, European Commission and European Parliament - is to work towards adopting, already in September, all regulations necessary for economic governance, meaning the so-called “package of six proposals”[31].

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[29] http://european-council.europa.eu/eurozone-governance/treaty-on-stability?lang=ro

[30] http://www.european-council.europa.eu/home-page/highlights/on-the-way-to-agreement-on-the-six-pack.aspx?lang=ro

[31] Idem.